

162

A. Clifford Edwards
Roger W. Frickle
EDWARDS, FRICKLE & CULVER
1601 Lewis Avenue, Suite 206
P.O. Box 20039
Billings, Montana 59104-0039
Telephone: (406) 256-8155

FILED	<i>John Riggs</i>
CLERK OF DISTRICT COURT	
SEP 23 2009	
BY <u>Jennifer Blekestad</u>	
DEPUTY	

Robert J. Savage
SAVAGE LAW FIRM
121 5th Street Southwest
P.O. Box 1105
Sidney, Montana 59270
Telephone: (406)433-9770

Attorneys for Plaintiffs

MONTANA SEVENTH JUDICIAL DISTRICT COURT, RICHLAND COUNTY

CLINTON JODELE MOSBY, deceased, by
and through his personal representative,
ARLANA MOSBY, and ARLANA MOSBY,
personal representative, on behalf of the
heirs of CLINTON JODELE MOSBY,

Plaintiffs,

vs.

CONTINENTAL RESOURCES, INC., an
Oklahoma corporation, DAKOTA
TERRITORY CONSULTING, INC., a North
Dakota corporation, and JOHN DOES I-V,

Defendants.

Cause No. DV-09-82

Judge Katherine Irigoin

COMPLAINT AND DEMAND FOR
JURY TRIAL

COME NOW the Plaintiffs, by and through their attorneys of record, Edwards,
Frickle & Culver and the Savage Law Firm, and for their complaint against the

Defendants, Continental Resources, Inc., and Dakota Territory Consulting, Inc., complain and allege as follows:

1. Clinton Jodele Mosby, deceased, was the natural son of Arlana and Lowell Mosby and at all times relevant hereto a resident of the State of North Dakota.

2. Arlana Mosby, was at all times relevant hereto, a resident of the State of North Dakota. Arlana was appointed Personal Representative in intestacy of the estate of Clinton Jodele Mosby, by Order dated April 29, 2009, issued by the Montana Seventh Judicial District Court, Richland County, Probate No. DP - 09-38.

3. The Defendant Continental Resources, Inc., was at all times relevant hereto, a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business in Enid, Oklahoma.

4. The Defendant Dakota Territory Consulting, Inc., was at all times relevant hereto, a corporation organized and existing under the laws of the State of North Dakota with its principal place of business in Watford City, North Dakota.

5. The true names and capacities of DOES I-V are unknown to the Plaintiffs, who therefore sue said Defendants under these fictitious names. On information and belief, Defendant DOES I-V, inclusive, (i) directly participated in or assisted in the performance of the wrongful acts and omissions described herein, although the full extent of their involvement is unknown at this time, OR (ii) conspired with the named parties in this case to perform the wrongful acts and omissions described below,

although the full extent of their involvement is unknown at this time, OR (iii) acted as principals or agents, actual or ostensible, of other named parties in this case in performing the wrongful acts and omissions described below, although the full extent of their involvement is unknown at this time. Plaintiffs thus believe that Defendant DOES I-V, inclusive, are liable for the damages and other relief sought in this case as participants, co-conspirators, principals or agents, or are otherwise necessary or indispensable parties to adjudication of the issues involved in this case. When the true names and capacities of DOES I-V, inclusive, have been ascertained, appropriate amendments of this Claim will be filed.

6. Plaintiffs are further informed, believe and thereon allege that at all times herein mentioned all Defendants, including DOES I-V, inclusive, (i) jointly perpetrated the acts described herein with their Co-Defendants, (ii) were the successors in interest to, or agents, principals, partners, joint venturers, or co-conspirators of their Co-Defendants in doing the things herein alleged and were acting within the scope and authority or in furtherance of a common scheme or design with the knowledge, permission, consent or ratification of their Co-Defendants in doing the things herein alleged and therefore are liable, jointly and severally, for all damages and other relief or remedies sought by Plaintiffs in this action.

FACTS COMMON TO ALL COUNTS

7. On February 16, 2007, Clinton Jodele Mosby was employed by Pioneer

Drilling Company and working in his capacity as a floorhand on Pioneer Drilling Company's Rig #42, which was located approximately thirty (30) miles west of Fairview, Richland County, Montana.

8. Upon information and belief, Pioneer Drilling Company had been contracted by Continental Resources, Inc., to perform work on an oil drilling project thirty (30) miles west of Fairview, Richland County, Montana, over which Continental Resources, Inc. and Dakota Territory Consulting, Inc. would supervise and control the project.

9. Upon information and belief, the erection of Drill Rig #42 and the placement of heavy metal stairs weighing approximately four hundred (400) pounds and leading from the mud tanks to the rig floor were supervised by Continental Resources, Inc. and Dakota Territory Consulting, Inc.

10. Oil drilling is an inherently dangerous activity and it was readily ascertainable to Continental Resources, Inc. and Dakota Territory Consulting, Inc. that the oil drilling project would pose peculiar risks to all involved, as well as, dangers special to and inherent in all oil drilling work, and that adequate precautions were required against recognized hazards that were causing or likely to cause death or serious physical harm to include crushing hazards due to inadequately secured stairs on a drilling rig.

11. During the afternoon of February 16, 2007, Clinton was working on

Drilling Rig #42 when the Rig experienced a decrease in pump pressure. After investigating the cause of the decrease in pressure, Clinton attempted to return to the rig floor by climbing the set of heavy metal stairs described above.

12. While Clinton was ascending the heavy metal stairs they became dislodged from the rig floor, subsequently causing both Clinton and the stairs to fall approximately ten (10) feet to the ground, all of which resulted in the stairs landing on Clinton, crushing him and, although surviving for an appreciable amount of time, ultimately resulted in his horrifying death.

COUNT ONE

Plaintiffs reallege and incorporate herein by reference Paragraphs 1-12 above and further allege as follows:

13. Upon information and belief, Defendants, and each of them, had a duty at the time of Clinton's accident to maintain a safe drilling rig and secure work area on the drilling project pursuant to contract and in fact.

14. Defendants, and each of them, breached that duty by allowing an inherently dangerous and unsafe drilling rig to be assembled and operated with inadequately secured metal stairs leading from the drilling platform to the mud tank and by failing to protect Clinton from falls and crushing hazards due to inadequately secured stairs, which was a substantial contributing factor to Clinton's fatal injuries and damages as set forth above.

15. As a result of the wrongful acts and omissions of Defendants as described in the preceding paragraphs, Clinton received massive crushing injuries to his chest, severe internal injuries, and a fractured right arm all of which resulted in his death.

16. The wrongful acts and omission of Defendants, and each of them, are of such character and of such aggravation so as to entitle Plaintiffs to all damages to which they are entitled under the Montana Constitution and statutory law including, but not limited to, punitive damages.

COUNT TWO

Plaintiffs hereby incorporate by reference the allegations set forth in Count One and further allege as follows:

17. The heirs of Clinton Jodele Mosby, on their own behalf, have been subjected, by the circumstances of the injuries and death of their son, to serious and severe emotional distress. The acts and/or omissions of the Defendants, as described above, constitute the commission of tort of negligent infliction of emotional distress as that cause of action is now recognized under Montana law. The heirs of Clinton Jodele Mosby have suffered and continue to suffer serious and severe emotional distress including, but not limited to, shame, humiliation, degradation, embarrassment, anger, disappointment and worry, all of which have resulted in further damages and injuries to the heirs of Clinton Jodele Mosby.

18. As a result of the wrongful acts and/or omissions of the Defendants, as

stated above, the heirs of Clinton Jodele Mosby have suffered and continue to suffer severe emotional distress which was the reasonably foreseeable consequence of said wrongful acts and/or omissions for which Defendants are liable to the heirs of Clinton Jodele Mosby for all damages available under Montana law.

COUNT THREE

Plaintiffs hereby incorporate by reference the allegations set forth in Counts One and Two and further allege as follows:

19. Plaintiffs, as a result of the wrongful acts and/or omissions of the Defendants, as stated above, have suffered and will continue to suffer loss of consortium as that claim is defined under Montana law, and are entitled to recover all damages available under Montana law from the Defendants.

WHEREFORE Plaintiffs pray judgment against the Defendants, and each of them, for all damages to which they are entitled to under Montana law in such categories and in such amounts as will be furnished Defendants in accordance with applicable Montana law and/or Rules of Civil Procedure. In addition, Plaintiffs are entitled to punitive or exemplary damages because of the character of Defendants' wrongful acts and/or omissions in such amounts as seems just and proper to their trial jury under the circumstances presented at trial.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all of the issues in this action.

DATED this 22nd day of September, 2009.

EDWARDS, FRICKLE & CULVER
and the SAVAGE LAW FIRM

By Roger W. Frickle
A. Clifford Edwards
Roger W. Frickle
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Clinton Jodele Mosby, deceased,
by and through his personal representative,
Arlana Mosby

(b) County of Residence of First Listed Plaintiff Richland
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) A. Clifford Edwards, Roger Frickle, Edwards, Frickle & Culver, Billings, MT 406-256-8155

DEFENDANTS Continental Resources, Inc. and
Dakota Territory Consulting, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) Gerald B. Murphy, Moulton Bellingham, PC, 1900 Crowne Plaza, Billings, MT 59101

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC, 1332

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
+\$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12-08-09

SIGNATURE OF ATTORNEY OF RECORD

Gerald B. Murphy

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

CASE 1:09-cv-0158-RFC-CSO Document 1 Filed 12/09/09 Page 1 of 1

Gerald B. Murphy
Emily Jones
MOULTON BELLINGHAM PC
Suite 1900, Crowne Plaza
P. O. Box 2559
Billings, Montana 59103-2559
Telephone (406) 248-7731

Attorneys for Defendant Dakota Territory Consulting, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CLINTON JODELE MOSBY,
deceased, by and through his personal
representative, ARLANA MOSBY, and
ARLANA MOSBY, personal
representative, on behalf of the heirs of
CLINTON JODELE MOSBY,

Plaintiffs,

-VS-

CONTINENTAL RESOURCES, INC.,
an Oklahoma corporation, DAKOTA
TERRITORY CONSULTING, INC., a
North Dakota corporation, and JOHN
DOES I-V,

Defendants.

Cause No. CV-09-158-BLG-RFC-CSO

NOTICE OF REMOVAL

COMES NOW Defendant Dakota Territory Consulting, Inc. ("Dakota Territory") and for its Notice of Removal alleges as follows:

I.

That this action was commenced in the Seventh Judicial District of the State of Montana, in and for the County of Richland, on or about September 22, 2009, and Defendant Dakota Territory was served with Summons and Complaint on or about October 17, 2009.

II.

That Defendant Dakota Territory is a North Dakota corporation with its principal place of business in the State of North Dakota.

III.

That the plaintiff is a Montana resident.

IV.

That this action is now pending in the District Court of the Seventh Judicial District of the State of Montana, in and for the County of Richland, for the recovery of an amount in excess of \$75,000.

V.

This action is one in which this Court has jurisdiction pursuant to the provisions of 28 U.S.C., Section 1332, and that it is removable from the State Court to this Court on demand and pursuant to the provisions of 28 U.S.C., Section 1446, and that it is an action wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs; that the Plaintiff is an individual who resides in the State of Montana; and that Defendant Dakota Territory is incorporated under the laws of the State of North Dakota and has its principal place of business in the State of North Dakota.

WHEREFORE, United files this Notice of Removal and requests removal of this action to the U.S. District Court of the District of Montana, Billings Division.

DATED this 8th day of December, 2009.

MOULTON BELLINGHAM PC

By: /s/ Gerald B. Murphy
GERALD B. MURPHY
Suite 1900, Crowne Plaza
P.O. Box 2559
Billings, MT 59103-2559

ATTORNEYS FOR DEFENDANT
DAKOTA TERRITORY CONSULTING, INC.